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Buesing Corporation

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Attorneys for Defendant/Counterclaimant

Helix Electric of Nevada, LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Buesing Corporation, an Arizona
Corporation,

Plaintiff,

v.

Helix Electric Of Nevada, LLC,
a Nevada Limited Liability Company, dba
Helix Electric,

Defendants.

Case No.: 2:16-cv-01439-JCM-NJK

**AMENDED
PRETRIAL ORDER**

AND RELATED COUNTERCLAIMS

After pretrial proceedings in this case,

IT IS ORDERED:

I.

This is an action for Breach of Contract. Plaintiff/Counter-defendant Buesing Corporation ("Buesing") contends that Defendant/Counterclaimant Helix Electrical of Nevada,

1 LLC ("Helix") breached the parties' contract ("Contract") by wrongfully terminating Buesing
2 entitling Buesing to damages. Helix contends that it properly terminated Buesing and/or that
3 Buesing abandoned its work entitling Helix to damages.

4 **II.**

5 Statement of Jurisdiction. This Court has subject matter jurisdiction over this action
6 pursuant to 28 U.S.C. §1332(a)(1) in that the matter in dispute is between citizens of two
7 different states and the amount in controversy exceeds the jurisdictional minimum of \$75,000.
8 Venue is proper before this Court pursuant to the Contract and 28 U.S.C. §1391(b) in that the
9 actions giving rise to the matter occurred in Henderson, Nevada.

10 **III.**

11 The following facts are admitted by the parties and require no proof:

12 1. On September 1, 2015, Helix entered into the "River Mountains Solar Project
13 Engineering, Procurement and Construction Contract" with NVT Licenses, LLC ("Sun Edison")
14 for the construction of a solar power plant in Henderson, Nevada ("Project").

15 2. Sun Edison was the Project Owner.

16 3. Helix was the Project Contractor.

17 4. On August 7, 2015, Helix entered into a "Subcontract Agreement" ("Contract")
18 with Buesing for the performance of certain work on the Project.

19 5. The Contract price was Three Hundred and Thirteen Thousand Two Hundred and
20 Ninety Six Dollars (\$313,296).

21 6. Buesing began pile installation on August 31, 2015.

22 7. Change Order Modifications 01 and 02 increased the Contract price to \$462,987.

23 8. On October 16, 2015, Helix gave Buesing notice that it was terminating the
24 Contract for "failure to perform and job abandonment."

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28 ///

1 IV.

2 The following facts, though not admitted, will not be contested at trial by evidence to the
3 contrary: N/A.

4 V.

5 The following are the issues of fact to be tried and determined at trial:

6 A. Whether Helix improperly terminated Buesing and, if so, what are Buesing's
7 damages.

8 B. Whether Helix properly terminated Buesing and, if so, what are Helix's damages.

9 VI.

10 The following are the issues of law to be tried and determined at trial:

11 A. Whether Helix improperly terminated Buesing and, if so, what are Buesing's
12 damages.

13 B. Whether Helix properly terminated Buesing and, if so, what are Helix's damages.

14 **(a) The following exhibits are stipulated into evidence in this case and may be so**
15 **marked by the clerk:**

16 1. Subcontract between Buesing and Helix dated August 7, 2015 – BUESING
17 000379-0415.

18 2. Ninyo & Moore Geotechnical Evaluation Report dated December 19, 2014 –
19 BUESING000074-0181.

20 3. Ninyo & Moore Pile Load Testing Report dated April 23, 2015 –
21 BUESING000056-0073.

22 4. Ninyo & Moore Concrete Encased Pile Foundation Test results dated October 23,
23 2015 – BUESING002193-2195.

24 5. Ninyo & Moore Addendum Geotechnical Recommendations dated December 16,
25 2015 – BUESING002191-2192.

26 6. SNWA River Mountains Solar Project Plan Sheet S-002.

27 7. SNWA River Mountains Solar Project Plan Sheet S-003 – BUESING000040.

28 8. SNWA River Mountains Solar Project Plan Sheet S-502 – BUESING000041.

1 9. SNWA River Mountains Solar Project Specifications Schedule 2 –
2 BUESING000016-0026.

3 10. SNWA River Mountains Solar Project Clearing and Demolition Plan sheet, Arch
4 “D.”

5 11. Executed Subcontract Mod # 1 dated September 23, 2015 –BUESING000422 and
6 BUESING000470.

7 12. Executed Subcontract Mod # 2 dated September 24, 2015 – BUESING000420
8 and BUESING000471.

9 13. Dave Brock letter to Buesing dated October 12, 2015 – BUESING000809-0810.

10 **(1) Plaintiff’s Exhibits.**

11 1. River Mountains Solar Project Engineering, Procurement and Construction
12 Contract dated September 1, 2015 – SUNE_Helix_030817_00001121 – 1195.

13 2. Exhibit A to Declaration of Bryon Matesi filed in support of Buesing’s Cross-
14 Motion for Partial Summary Judgment.

15 3. Waylon Anglin e-mail dated September 10, 2015 - BUESING000881-0882.

16 4. Dave Brock e-mail dated September 10, 2015 – BUESING000900-0903.

17 5. Waylon Anglin e-mail dated September 11, 2015 – BUESING000900.

18 6. Dave Brock email dated September 14, 2015 – BUESING00898-0900.

19 7. Waylon Anglin email dated September 15, 2015 – BUESING00898-0899.

20 8. Dave Brock email dated September 15, 2015 – BUESING00898-0899.

21 9. Mark Smith e-mail dated September 22, 2015 with Subcontract Mod # 1 –
22 BUESING000876-0878.

23 10. Ken Wade e-mail dated September 22, 2015 – SUNE_Helix_030817_00001948.

24 11. Ed Seward text photograph dated September 22, 2015 BUESING000873.

25 12. Waylon Anglin e-mail dated September 23, 2015 – BUESING000876.

26 13. Dave Brock e-mail dated September 23, 2015 – BUESING000909.

27 14. Mark Smith e-mail dated September 23, 2015 – BUESING000912.

- 1 15. Dave Brock, Waylon Anglin, and Adam Gudgeon e-mail exchange of September
2 24, 2015 – BUESING000911-0912.
- 3 16. Dave Brock e-mail dated September 18, 2015 – BUESING 001067.
- 4 17. Bryon Matesi e-mail dated September 23, 2015 with attachment –
5 BUESING001067-1069.
- 6 18. Dave Brock e-mail dated September 23, 2015 -SUNE_Helix_030817_00000082-
7 0085.
- 8 19. Dave Brock e-mail dated September 24, 2015 – BUESING000906.
- 9 20. Waylon Anglin/Adam Gudgeon/Dave Brock e-mail exchange of October 2, 2015
10 – BUESING000913-0914.
- 11 21. SunEdison letter dated October 5, 2015 – SUNE_Helix_030817_00000086-0088.
- 12 22. Ed Seward e-mail dated October 5, 2015 – BUESING000875.
- 13 23. Armando Martinez e-mail dated October 6, 2016 –
14 SUNE_Helix_030817_00000082-0085.
- 15 24. Dave Brock/Waylon Anglin e-mail exchange dated October 7-8, 2015 –
16 BUESING000904-0905.
- 17 25. Bryon Matesi e-mail of October 9, 2015 – BUESING001042-1043.
- 18 26. Dave Brock email of October 12, 2015 - BUESING001042.
- 19 27. Dave Brock/Eboney Taylor e-mail exchange of October 12, 2015 –
20 BUESING000626.
- 21 28. Bryon Matesi e-mail dated October 13, 2015 – BUESING001042.
- 22 29. Bob Johnson/Dave Brock e-mail exchange dated October 15, 2015 –
23 BUESING000628.
- 24 30. Adam Gudgeon e-mail dated October 15, 2015 – BUESING000574.
- 25 31. Waylon Anglin e-mail dated October 15, 2015 – BUESING000929.
- 26 32. Bryon Matesi letter to Helix dated October 16, 2015 – BUESING000934-0935.
- 27 33. Dave Brock e-mail dated October 16, 2015 – BUESING000816.
- 28

- 1 34. Bryon Matesi e-mail dated October 16, 2015 – BUESING001044.
- 2 35. Waylon Anglin e-mail dated October 19, 2015 – BUESING001045.
- 3 36. Bryon Matesi e-mail dated October 19, 2015 – BUESING001048.
- 4 37. Dave Brock/Bryon Matesi e-mail exchange dated October 19-20, 2015 –
5 BUESING001050-1051.
- 6 38. Bryon Matesi e-mail dated October 20, 2015, with attachment –
7 BUESING001050-1054.
- 8 39. Adam Gudgeon timeline dated October 21, 2015 – BUESING000891-0894.
- 9 40. Adam Gudgeon timeline dated October 23, 2015 - BUESING000919-0928.
- 10 41. Bryon Matesi e-mail dated October 27, 2015 - BUESING001065.
- 11 42. Bryon Matesi e-mail dated October 30, 2015 - BUESING001066.
- 12 43. Bryon Matesi/Dave Brock e-mail exchange dated November 18, 2015 –
13 BUESING001033.
- 14 44. Bryon Matesi letter to Helix dated November 24, 2015 – BUESING000846.
- 15 45. Robert Johnson e-mail dated October 26, 2015 – HEN009620.
- 16 46. Robert Johnson letter to NVT Licenses, LLC dated October 30, 2015 –
17 HEN009618-9619.
- 18 47. Robert Johnson letter to SunEdison dated October 30, 2015 – HEN009627-28.
- 19 48. Robert Johnson e-mail dated October 30, 2015 –
20 SUNE_Helix_030817_00003855.
- 21 49. Dave Brock e-mail dated November 4, 2015 – HEN009632.
- 22 50. Dave Brock e-mail dated November 6, 2015 – HEN009632-9634.
- 23 51. Change Notice – CCN#2 dated November 6, 2015 with exhibits -
24 SUNE_Helix_003817_00006908-07052.
- 25 52. Bob Johnson e-mail dated November 23, 2015 with SunEdison letter dated
26 November 20, 2015 – HEN009635-9640.
- 27 53. Robert Johnson letter to SunEdison dated November 24, 2015 – HEN009641-
- 28

1 9644.

2 54. Brian Vesey e-mail dated October 19, 2015 – BUESING007875.

3 55. Armando Martinez/Dave Brock e-mail string dated December 4, 2015 with draft
4 Change Order – HEN009645-9649.

5 56. Change Order draft dated December 16, 2015 –HEN009656-9664.

6 57. Change Order draft dated December 17, 2015 –HEN009655-9664.

7 58. Change Order draft dated December 17, 2015 (2) –HEN009650-9654.

8 59. Change Order draft dated January 6, 2016 – SUNE_Helix_030817-00000446-
9 0448.

10 60. Change Order draft dated January 7, 2016 - HEN009665-9672.

11 61. Change Order draft dated January 15, 2016 - HEN009673-9676.

12 62. Change Order draft dated January 18, 2016 - HEN009677-9680.

13 63. Executed Change Order – HEN009681-9683.

14 64. Phillip S. Coppola Evaluation dated February 15, 2016 - BUESING000847-0867.

15 65. Phillip S. Coppola Evaluation dated February 7, 2017 - BUESING002062-2073.

16 66. Phillip S. Coppola Evaluation dated March 21, 2017 - BUESING006777-6793.

17 67. Phillip S. Coppola Evaluation dated October 2, 2017 - BUESING006794-6799.

18 68. Curriculum Vitae for Phillip S. Coppola, Assoc. AIA, CCI – BUESING006800-
19 6809.

20 69. Ken Wade e-mail dated September 22, 2015 –SUNE_Helix_030817_00001955.

21 70. Armando Martinez/Darryk Ataide e-mail string dated September 24, 2015 –
22 SUNE_Helix_030817_00002113.

23 71. Armando Martinez e-mail dated September 25, 2015 –
24 SUNE_Helix_030817_00002182.

25 72. Mike Sullivan e-mail dated December 1, 2015 – SUNE_Helix_03817_00006072.

26 73. Buesing Site Video and select Photographs – BUESING000042-0055 and
27 BUESING000182-0378.

1 74. Buesing's Job Site Diaries – BUESING0001074-1118.

2 75. NV-13-0023 SNWA River Mountains Supplementary System and Design Notes –
3 BUESING00000027-0038.

4 76. Ninyo & Moore letter dated September 29, 2014 – BUESING004294-4302.

5 77. Ninyo & Moore letter dated December 26, 2014 – BUESING004303-4305.

6 78. Ninyo & Moore letter dated July 1, 2015 – BUESING003447-3454.

7 79. Ninyo & Moore letter dated November 23, 2015 – BUESING006395.

8 **(2) Defendant's exhibits.**

9 **(a) Will Offer:**

10 A. David W. Sykora's expert report, curriculum vitae and rebuttal report (unbates).

11 B. W. Wesley Grover's expert report, curriculum vitae and rebuttal report (unbates).

12 C. Correspondence - HEN000001 - HEN000167

13 D. Phase Code Sub Report, Dated May 2, 2016 - HEN000168 - HEN000169

14 E. Site Remediation Labor Report - HEN000170

15 F. Pile Remediation Labor Report - HEN000171

16 G. Drill Labor Report - HEN000172

17 H. Pile Set Labor Report - HEN000173

18 I. Buesing Associates Cost - HEN000174 - HEN000285

19 J. Daily Reports – August – December 2015 – HEN 287-9175

20 K. Replacement Pile invoices - HEN009581 - HEN009583

21 L. SunEdison documents responsive to Subpoena - SUNE_Helix_030817-
22 000000001 – 00008187

23 M. Ninyo & Moore documents - Buesing 2074-6776

24 **(b) May Offer if the need arises:**

25 N. Buesing Associates Cost for Pile Remediation - HEN000286

26 O. Documents for Gillet Construction, LLC - HEN009176 - HEN009265

27 P. Documents for Hayward Baker, Inc. - HEN009266 - HEN009518

- 1 Q. Documents for Stewart & Sundell Concrete - HEN009519 - HEN009531
- 2 R. Correspondence - HEN009532 - HEN009534
- 3 S. Subcontract Process Billing - HEN009535 - HEN009539
- 4 T. Emails - HEN009584 - HEN009613
- 5 U. FedEx Tracking #774866004517 to NVT Licenses, LLC - HEN009614 -
- 6 HEN009622
- 7 V. FedEx Tracking #774866031521 to SunEdison - HEN009623 - HEN009631
- 8 W. Email to Dave Brock from Armando Martinez dated November 6, 2015 re ROM
- 9 for Pile Redirection Cost - HEN009632 - HEN009634
- 10 X. Email to Victor Fuchs from Bob Johnson dated November 23, 2015 re SunEdison
- 11 Response - HEN009635 - HEN009640
- 12 Y. Letter to SunEdison from Helix Electric November 24, 2015 - HEN009641 -
- 13 HEN009644
- 14 Z. Email to Bob Johnson from Dave Brock dated December 4, 2015 re RMS -
- 15 Change Order 001 - HEN009645 - HEN009649
- 16 AA. Email to Armando Martinez, Mike Sullivan, Kirk Hayes dated December 17,
- 17 2015 re River Mountain Change Order 001 - HEN009650 - HEN009654
- 18 BB. Email to Victor Fuchs, Bob Johnson from Dave Brock dated December 17, 2015
- 19 re PV Facility EPC Contract - Change Order 001 - HEN009655 - HEN009659
- 20 CC. ROM Pile Remediation (Thru Week 12/31/15) - HEN009660 - HEN009664
- 21 DD. Email to Victor Fuchs, Kirk Hayes from Kirk Hayes dated January 11, 2016 re
- 22 Change Order and Payment - HEN009665 - HEN009672
- 23 EE. Email to Kirk Hayes, Mike Sullivan from Bob Johnson dated January 15, 2016 re
- 24 Change Order - HEN009673 - HEN009676
- 25 FF. Email to Victor Fuchs, Bob Johnson from Kirk Hayes dated January 18, 2016 re
- 26 Executed Change Order - HEN009677 - HEN009680
- 27 GG. Change Order Number 001 (Fully Executed) - HEN009681 - HEN009683
- 28

1 HH. Email to Armando Martinez, Nick Knezevich, Erika Brosz, Ken Wade, Bob
2 Johnson, Ed Seward, Bill Valerio, Mark Smith, Eboney Taylor from Dave Brock dated
3 September 23, 2015 re Site Conditions - HEN009684 - HEN009688

4 II. Plans - HEN009689 - HEN009690

5 JJ. Buesing job file documents - Buesing 001-846; 868-2061

6 KK. Hayward Baker documents - Buesing 6810-11930.1.

7 **(b) As to the following additional exhibits, the parties have reached the stipulations**
8 **stated: N/A**

9 **(c) As to the following exhibits, the party against who, the same will be offered objects**
10 **to their admission on the grounds stated:**

11 (1) Plaintiff's exhibits: Defendant reserves its right to object to each of the Plaintiff's
12 exhibits based on foundation, relevance, hearsay, and F.R.E. Rule 403.

13 (2) Defendant's exhibits. Plaintiff reserves its right to object to each of the
14 Defendant's exhibits based on foundation, relevance, hearsay, and F.R.E. Rule 403.

15 **(d) Electronic evidence.** The parties anticipate using electronic equipment during jury
16 deliberations to display documents, photographs, and videos.

17 **(e) Depositions**

18 (1) Plaintiff will offer the following depositions:

19 1. David Sykora Deposition at:

20 i. Page 23, lines 21-23

21 ii. Page 27, line 18 – Page 28, line 18

22 iii. Page 44, line 19 – Page 45, line 18

23 iv. Page 46, lines 15-22

24 v. Page 51, lines 3-7, 8-15

25 vi. Page 101, line 22 – Page 104, line 5

26 2. Wesley Grover Deposition at:

27 i. Page 42, lines 18-20

28 ii. Page 43, lines 19-23

- iii. Page 86, line 13 – Page 87, line 14
- iv. Page 88, Lines 6-16
- v. Page 90, line 19 – Page 91, line 15
- vi. Page 110, line 11 – Page 111, line 7
- vii. Page 113, line 11 – Page 114, line 21
- viii. Page 124, lines 6-22
- ix. Page 136, line 21 – Page 137, line 5
- x. Page 149, line 9 – Page 151, line 6
- xi. Page 158, line 17 – Page 159, line 17
- xii. Page 173, line 18 – Page 176, line 4

3. Plaintiff reserves the right to offer additional testimony by way of deposition for any listed and deposed witness if the witness is deemed unavailable as allowed by the rules of civil procedure. Plaintiff further reserves the right to utilize any deposition taken for purposed of impeachment or cross-examination as allowed by the rules of evidence.

(2) Defendant will offer the following depositions: Defendant does not intend to offer any testimony by deposition unless the deponent is unavailable as allowed by the rules of civil procedure. Defendant may utilize any depositions taken for impeachment or cross-examination as allowed by the rules of evidence.

(f) Objections to Depositions

(1) Defendant objects to the plaintiff's depositions as follows: Defendant objects to Plaintiff offering any deposition testimony unless allowed by the rules of civil procedure because the deponent is unavailable for trial or other admissible basis.

(2) Plaintiff objects to the defendant's depositions as follows: Plaintiff reserves the right to object to Defendant offering any deposition testimony if such deposition testimony is offered at trial.

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VII.

The following witnesses may be called by the parties at trial.

A. Plaintiff's witnesses.

1. Bryon Matesi, Buesing Corp. c/o Dickinson Wright
2. Waylon Anglin, Buesing Corp. c/o Dickinson Wright
3. Adam Gudgeon, Buesing Corp. c/o Dickinson Wright
4. Phillip Coppola, Phillip S. Coppola & Associates, 13771 N Fountain Hills Blvd, Fountain Hills, AZ
5. David Brock, Bombard Electric, 3570 W Post Rd, Las Vegas, NV
6. Bill Valerio, formerly of Helix, current address unknown
7. Mike Sullivan, formerly of Sun Edison, current address unknown
8. Eric Elison, Ninyo & Moore, 6700 Paradise Rd., Ste. E, Las Vegas NV 89119, 702-433-0330

B. Defendant's witnesses.

1. Ed Seward, Helix Electric c/o Parker, Nelson
2. Robert Johnson, Helix Electric c/o Parker, Nelson
3. Victor Fuchs, Helix Electric c/o Parker, Nelson
4. David Sykora, Exponent, 9 Strathmore Road Natick MA
5. Wesley Grover, FTI Consulting, 227 West Monroe Street Chicago, IL
6. Eric Elison, Ninyo & Moore, 6700 Paradise Rd., Ste. E, Las Vegas, NV 89119, 702-433-0330
7. Naik Banavathu, Ninyo & Moore, 6700 Paradise Rd., Ste. E, Las Vegas, NV 89119, 702-433-0330
8. Bruce Bowman, Ninyo & Moore, 6700 Paradise Rd., Ste. E, Las Vegas, NV 89119, 702-433-0330
9. Ken Wade, Sun Edison, 600 Clipper Drive, Belmont, CA, 94002, 702-283-3850
10. Bryon Matesi, Buesing Corp. c/o Dickinson Wright
11. Waylon Anglin, Buesing Corp. c/o Dickinson Wright

12. Adam Gudgeon, Buesing Corp. c/o Dickinson Wright

13. Phillip Coppola, Phillip S. Coppola & Associates, 13771 N Fountain Hills Blvd, Fountain Hills, AZ

VIII.

Pursuant to the Court's May 23, 2019 Order (Docket No. 63) and June 10, 2019 Order (Docket No. 67) this matter has been set for a five day bench trial commencing January 27, 2020.

IX.

It is estimated that the bench trial will take a total of 5 days.

APPROVED AS TO FORM AND CONTENT:

Dated this 21st day of October, 2019

Dated this 21st day of October, 2019

DICKINSON WRIGHT PLLC

PARKER, NELSON & ASSOCIATES, CHTD.

/s/ Cynthia L. Alexander

/s/ Shana D. Weir

Cynthia L. Alexander (NV Bar No. 6718)

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Attorneys for Buesing Corporation

Attorneys for Helix Electric of Nevada, LLC.

X.

ACTION BY THE COURT

This case is set for court trial on the stacked calendar on January 27, 2020. Calendar call will be held on January 22, 2020 at 1:30 p.m. in Courtroom 6A.

This pretrial order has been approved by the parties to this action as evidenced by their signatures or the signatures of their attorneys hereon, and the order is hereby entered and will govern the trial of this case. This order may not be amended except by court order and based upon the parties' agreement or to prevent manifest injustice.

DATED October 23, 2019.


UNITED STATES DISTRICT JUDGE